tion of any deed or writing is required on the vendee's part. *Sands* v. *Arthur*, therefore, if to be supported, must be so on a ground not taken by the Supreme Court that, viz., of non-acceptance by the vendee of the deed or writing tendered by the vendor. And the remark in *Sausser* v. *Steinmetz*, that either party may decline to carry out a parol contract relating to land must be confined to the facts in the particular case, where the vendee had failed to comply with the statute; if not so qualified this doctrine can only be correct where the vendee has refused to accept. In other words, *Sands* v. *Arthur* must be rested on the doubtful basis of non-acceptance or be regarded as bad law, and the general remark in *Sausser* v. *Steinmetz*, be limited to the cases where the vendor has not tendered a deed or writing, or be extended at the furthest to those where although the vendor has tendered a deed or writing, the vendee has refused to accept it.

H. R.

Supreme Court of the United States.

THE NORTHWESTERN UNIVERSITY *v.* THE PEOPLE.

The expression in a constitution or statute exempting from taxation property, "necessary for school purposes," is more extensive than "for the use of schools." The former includes property which is not itself in actual use by the school, but which by being rented produces an income that is applied to the support of the school.

The fourth section of the Amendatory Charter of 1855, of The Northwestern University, provides "that all property of whatever kind or description belonging to or owned by said corporation shall be for ever free from taxation for any and all purposes." Sect. 3, art. 9, of the state constitution of 1848, of Illinois, in force when said amendment was made, provided that "the property of the state and counties, both real and personal, and such other property as the General Assembly may deem necessary for school, religious and charitable purposes may be exempted from taxation." Sect. 3, art. 9, of the state constitution of 1870, provided that "the property of the state, counties and other municipal corporations, both real and personal, and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, may be exempted from taxation; but such exemption shall be only by general law;" and the revenue act of 1872, passed thereunder, exempted "all property of institutions of learning, including the real estate on which the institutions are located, not leased by such institutions or otherwise used with a view to profit." The Supreme Court of Illinois in this case, *held* (80 Ill. 330): That the above-quoted section of the constitution of 1848 did not authorize the exemption from taxation of property owned by educational, religious or charitable corporations, which was not itself used directly in aid of the purposes for which the corporations were created, but which was held for profit merely, notwithstanding the profits were to be devoted to the proper purposes of the corporation. Upon error to the Supreme Court of the United States, *held*, that, the language of the constitution of 1848, being, that the legislature might exempt from taxation "such property as they might deem necessary," not for the use of schools, but "for school purposes," lands held by the university for sale or lease, the profits to be devoted to the use and support of the university, were held for school purposes

within the meaning of the constitution of 1848 : that this construction necessarily becomes a part of the legislative contract made by the Amendatory Act of 1855, and that said act having been accepted by the university, and investments made on the faith of it, the obligation of the legislative contract thereby completed was impaired by the provisions of the constitution of 1870, and the revenue act of 1872, above quoted, and the judgment of the Supreme Court of Illinois was accordingly reversed.

ERROR to the Supreme Court of Illinois. The facts are stated in the opinion.

Wirt Dexter and *M. Carpenter*, for plaintiff in error.

James K. Edsall and *C. H. Willett*, for defendant in error.

The opinion of the court was delivered by

MILLER, J.—This is a writ of error to the Supreme Court of Illinois, bringing before us a judgment of that court, holding that certain property of the plaintiffs was liable to taxation, which was resisted on the ground that it was exempt by a legislative contract. The university was incorporated by an act of the legislature of Illinois, approved January 28th 1851, which contained the powers necessary to its usefulness as an institution of learning, and among other provisions, authorized it to purchase and hold real estate to the extent of two thousand acres of land, and receive gifts and devises of land above that amount, which must be sold within ten years. In 1855 the legislature, by an amendment to this charter, appointed three additional trustees and enlarged its powers in some respects not very important. But the fourth section of that act is the one supposed to contain the contract on which this case must be decided. It reads thus: "That all property of whatever kind or description belonging to or owned by said corporation shall be for ever free from taxation for any and all purposes." The state constitution of 1848, in force when the charter and amended charter above cited were enacted, declared that "the property of the state and counties, both real and personal, and such other property as the General Assembly may deem necessary for school, religious and charitable purposes, may be exempt from taxation." The record shows a very large list of lots and lands in Cook county, which the plaintiff asserted to be free from taxation under the law, but which were listed for the taxes of the year 1874, and about to be sold for their non-payment. By proper judicial proceedings the question came before the Supreme Court of the state, which held that they were liable to be so taxed.

A motion was made some time before the case was reached for

argument in this court, to dismiss it for want of jurisdiction, and was overruled; but the attorney-general of Illinois reserves the objection now in connection with the main argument. This question of jurisdiction to reverse the judgments of state courts is so frequent, and the principles which govern it so well settled, that we need not be very elaborate in our opinion on that point. The argument is that the judgment of the state court is limited to a construction of the fourth clause of the amendatory charter of 1855, as it is affected by the constitution under which it was enacted, and that whether that statute was a contract or not, and whether it was properly construed or not, it is still but the decision of a court construing a contract or a statute, and there is no law of the state impairing the obligation of that contract within the meaning of the constitution of the United States. If this were true in point of fact the conclusion would be sound, as we have repeatedly held in this court: *Railroad Co.* v. *Rock*, 4 Wall. 177; *Railroad Co.* v. *McClure*, 10 Id. 511; *Knox* v. *Exchange Bank*, 12 Id. 379. But the premises assumed are not justified by the facts. The general revenue law of Illinois, prior to the amendment of 1855 to plaintiff's charter, contained nothing which exempted its property from taxation. When that act was passed it became a part of the law of the state governing taxation as applicable to the property of the university. The law remained in this condition until the state adopted a new constitution in 1870, the part of which relating to this subject is in these words: "The property of the state, counties, and other municipal corporations, both real and personal, and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, may be exempted from taxation, but such exemption shall be only by general law."

In order to conform the law of the state on the subject of taxation to this provision of the new constitution, the legislature revised its revenue laws in 1872, and in this statute the exemption established was, first, all lands donated by the United States for school purposes not sold or leased, all public school-houses, all property of institutions of learning, including the real estate on which the institutions are located, not leased by such institutions or otherwise used with a view to profit; second, all church property actually and exclusively used for public worship, when the land (to be of reasonable size for the location of the church building) is owned by the

congregation. It was under this law the local officers proceeded in assessing plaintiff's land for taxation, and it was their construction of this law which was sustained by the Supreme Court. If, therefore, the legislation of 1855 was a contract which exempted the property in question from taxation, and by the law of 1872, as construed by the Supreme Court, it is held liable to taxation, it is manifest that it is the law of 1872 and the constitution of 1870 which impairs the obligation of the contract, however the court by an erroneous construction of that contract, was led to hold otherwise. It is strenuously insisted that these provisions of the constitution of 1870 and the revenue law of 1872 do not repeal the exemption as established by the 4th section of the amended charter of 1855, because that section was in excess of the authority conferred by the constitution of 1848. But this depends on the construction of that contract as affected by the constitution under which it was enacted. If, by virtue of that constitution, the legislature of that day could only exempt plaintiff's real estate so far as it was in immediate use for school purposes, as was held by the Supreme Court, then it may not repeal that statute or impair that contract, for the exemption will probably amount to the same thing under either statute. But if it is a contract, as is contended by plaintiff's counsel, which, under a true construction of the constitution of 1848 exempts all property of plaintiff which is held by it for appropriation to the purposes of the university as an institution for teaching, and which is held for no other purpose whatever, and which can as effectually promote this purpose by leases, of which the rent goes to support the school, as in any other way, then the law of 1872 and the constitution of 1870 do, to the extent of the difference arising from these two constructions, impair the obligation of the contract of 1855. Whether that contract is such as to be impaired by these later laws is one of the questions of which this court always has jurisdiction: *Jefferson County Bank* v. *Skelly*, 1 Black 436; *Bridge Proprietors* v. *Hoboken*, 1 Wall. 144; *Delmas* v. *Insurance Co.*, 14 Id. 668.

The Supreme Court of Illinois in its opinion found in the record appears to concede that the Act of 1855, to the extent that it was authorized by the state constitution, was a contract. "It is not claimed," says the court, "that the appellant is in any sense a public corporation, but it is claimed that the purpose for which it is created is so far beneficial to the public that it affords a sufficient

consideration for the grant of exemption from taxation in the amendment, and that when the amendment was accepted and acted on by the corporation, it must be held a vested right which cannot be withdrawn by subsequent legislation because of the provision of the constitution of the United States which prohibits a state from passing a law impairing the obligation of a contract. If it was competent for the General Assembly to make the exemption, we are not disposed to contest the correctness of this position, but if it was not competent to make the exemption, the attempt was a nullity, and the case is not affected by the constitution of the United States." The court thus concedes that there was a contract, so far as the legislative powers extended. It is possible if that question had been fully investigated and all the facts necessary to decide it were before the court, it might not appear that all the lands subjected to taxation by the judgment of the Supreme Court were bought after the date of the amended charter or donated on the faith of that exemption; but it does appear, by a stipulation made for that purpose, that since the granting of said amended charter the corporation has expended in the erection and purchase of buildings, apparatus and other facilities and appliances for education and promotion of the objects stated in and contemplated by the act of incorporation, over $200,000, realized from donations and the sale of lots and lands, and has built up a university, with several departments of learning, in which more than five hundred students are taught the higher branches of learning. It is perhaps a fair inference from this statement, and in deference to the ruling of the Supreme Court, that there was such acceptance of this Act of 1855, and such investments made on the faith of it, that at least some portion of the property now in question is protected by contract if the exemption clause lawfully covers it. It will readily be conceded that the language of the fourth section of the Act of 1855 is broad enough for that purpose: "All property, of whatever kind and description, belonging to or owned by said corporation, shall be for ever free from taxation for any and all purposes." But the argument is that since the constitution then in force only permitted the legislature to exempt from taxation the property, real and personal, used by the university in immediate connection with its function of teaching, the statute must be limited to property so used. This was the view taken by the Supreme Court of the state. "By the language of the constitution," says the court, "while a

discretion is conferred on the General Assembly whether to exempt or not, and, if it shall determine to exempt the amount of the exemption, it is clearly restricted in the exercise of this discretion to property for schools and religious and charitable purposes. Property for such purposes, in the primary and ordinary acceptance of the term, is property which in itself is adapted to and intended to be used as an instrumentality in aid of such purposes. It is the direct or immediate use and not the remote or consequential benefit to be derived through the means of the property that is contemplated."

Though the court is here construing the constitution of its own state, and is therefore entitled to our consideration on that ground, as well as the court's character and standing for learning and ability, we find ourselves in the performance of the duty of reviewing this case, compelled to differ from that court in the nature and extent of the constitutional limitation of this contract, as made by the legislature of the same state; for this constitution necessarily becomes part of the contract which is said to be impaired by subsequent legislation. The first observation we have made is that the constitution does not say "property used for schools," as the opinion of the court implies. Neither the important word "use" or "schools" is found in the third section of the instrument on that subject. If the language were that the legislature might "exempt property for the use of schools" we should readily agree with that court. Indeed, that would be the appropriate language to convey the idea on which the court rests its decision. The makers of the constitution, however, used other language because they had another meaning, and did not use that because they did not mean that. They said that the legislature might exempt from taxation "such property as they might deem necessary," not for the use of schools but "for school purposes." The distinction is, we think, very broad between the property contributing to the purpose of a school made to aid in the education of persons in that school, and that which is directly or immediately subjected to use in the school. The purposes of the school and the school itself are not identical. The purpose of a college or university is to give youth an education. The money which comes from the sale or rent of land dedicated to that object aids this purpose. Land so held and leased is held for school purposes in the fullest and clearest sense. A devise of a hundred acres of land "to the president

of the university for the purpose of the school," would be not only a valid conveyance, but if the president failed to do so a court of chancery would compel him to execute the trust; but if he leased it all for fair rent and paid the proceeds into the treasury of the corporation to aid in the support of the school, he would be supported as executing the trust. When the constitution, in 1870, came to be reconstructed, its framers had learned something about exemption from taxation, as we shall see by placing the revision in that constitution alongside that of 1848 on the same subject, as follows: 1848—"The property of the state and counties, both real and personal, and such other property as the General Assembly may deem necessary for school, religious and charitable purposes may be exempt from taxation." 1870—"The property of the state, counties and other municipal corporations, both real and personal, and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, may be exempted from taxation. But such exemption shall be only by general law." Here it is only such property as may be exclusively used for school purposes that may be exempt, and this only by a general law. The general law passed in 1872, to give effect to this change in the constitution, exempted only "the real estate on which the institutions of learning are located, not leased by such institutions or otherwise used with a view to profit." This is what the Supreme Court say was meant by the constitution of 1848, but if it was it took a deal of change in the language when the framers of the new constitution and of the new tax law came to express the same idea. We cannot come to the conclusion that they intended to mean the same, but that the later law was designed to limit the more enlarged power of the earlier one. If our construction of the constitution of 1848 is sound, the judgment of the Supreme Court must be reversed, for the stipulation of facts on which the case was tried says, that "it is admitted that all the lots and lands mentioned and described in the objections filed in said proceeding for judgment, whereon said taxes are levied, excepting improvements in the same, are leased by said university to different parties for different parties for a longer or shorter period, and that all said lots and lands are held for sale or lease for the use and support of said institution, and the objects contemplated by said charter." We are of opinion that such use and such holding bring them within the class of property which

by the constitution of 1848, the legislature could, if it deemed proper, exempt from taxation, and that the legislature did so exempt it. The judgment of the Supreme Court of the state is reversed, and the case remanded to that court for further proceedings not inconsistent with this opinion.

Mr. Justice STRONG did not sit in this case.

The importance of the principal case in its bearing upon the property interests of educational, charitable and religious corporations in the state of Illinois, can hardly be over-estimated; but while the friends of higher education and of the institution of learning whose interests are involved in this case, can not but rejoice at the conclusion arrived at by the learned court, it will not, it is hoped, be regarded as presumptious to examine some of the cases heretofore decided, and state some of the principles therein laid down, bearing upon the general topic of exemptions from taxation, with a view to examining the grounds of this decision.

It is settled that charters of incorporation, except in the case of municipal corporations, constitute contracts between the state and the corporators, the obligation of which may not be impaired by legislative action alone, unless the right so to do is reserved by the state, either in the charter or by statutory or constitutional provision. *Dartmouth College* v. *Woodward*, 4 Wheat. 518; *Planters' Bank* v. *Sharp*, 6 How. 301; *Trustees of Vincennes University* v. *Indiana*, 14 Id. 268; *Scotland Co.* v. *M., I. & N. Railway Co.*, 65 Mo. 123; Cooley's Const. Lim. 126, 279, and cases there cited; Burroughs on Taxation 109.

It is also settled upon the authority of the decisions of the Supreme Court of the United States, that a state may by contract to that effect, founded upon a consideration, exempt the property of an individual or corporation from taxation for any specified period, or even permanently, and also, as it seems, that where a charter containing an exemption from taxes or an agreement that the taxes shall be to a specified amount only, is accepted by the corporators, the exemption is presumed to be upon sufficient consideration, and consequently binding upon the state. Cooley's Const. Lim. 12, 280; Cooley on Taxation 53; Blackwell on Tax Titles 407; *Gordon* v. *Appeal Tax Court*, 3 How. 133; *New Jersey* v. *Wilson*, 7 Cranch 164; *Piqua Branch Bank* v. *Knoop*, 16 How. 369; *Ohio Life Ins. Co.* v. *Debolt*, 16 Id. 432; *Dodge* v. *Woolsey*, 18 Id. 331: *Mechanics' and Traders' Bank* v. *Debolt*, 18 Id. 381; *Mechanics' and Traders' Bank* v. *Thomas*, Id. 384; *Jefferson Branch Bank* v. *Skelly*, 1 Black 436; *Erie Railroad Co.* v. *Pennsylvania*, 21 Wall. 492; *Scotland Co.* v. *M., I. & N. Railway Co., supra*. See, however, the last proposition of the above rule criticised in Burroughs on Taxation 116, where the subject of the consideration necessary is fully considered. See, also, Cooley on Taxation 54; *Tucker* v. *Ferguson*, 22 Wall. 527; *West Wis. Railroad Co.* v. *Supervisors*, 93 U. S. 595.

The rule that a state may by contract preclude itself from the future exercise of the right of taxation, though, as above stated, settled upon authority, has, however, met with strenuous opposition at the hands of some of the state courts and of the dissenting judges of the Supreme Court of the United States. See *Toledo Bank* v. *Bond*, 1 Ohio St. 622; *Mechanics' & Traders' Bank* v. *Debolt*, Id. 591; *Knoop* v. *Piqua Bank*, Id. 603; *Milan, &c., Plank Road Co.*

v. *Husted*, 3 Id. 578; *Piscataqua Bridge* v. *N. H. Bridge*, 7 N. H. 69; *Brewster* v. *Hough*, 10 Id. 143; *Backus* v. *Lebanon*, 11 Id. 24; *Thorpe* v. *R. & B. Railroad Co.*, 27 Vt. 140; *Brainard* v. *Colchester*, 31 Conn. 410; *Mott* v. *Penna. Railroad Co.*, 30 Penn. St. 9; *East Saginaw Salt Manufacturing Co.* v. *East Saginaw*, 19 Mich. 259; *West Wisconsin Railroad Co.* v. *Supervisors*, 35 Wisc. 265; *Attorney-General* v. *Chicago, &c., Railroad Co.*, Id. 572; *Washington University* v. *Rouse*, 8 Wall. 441, per MILLER, J.; Blackwell on Tax Titles 408; Burroughs on Taxation 109, *et seq.* And were the question now to arise for the first time, it would deserve great consideration whether upon principle it ought not to be settled otherwise. See the authorities last above cited. The general rule unquestionably is, as stated by Blackstone (1 Bl. Com. 90), that "Acts of Parliament derogatory to the power of subsequent Parliaments, bind not." With reference to the same subject, Judge COOLEY, in his learned work on Constitutional Limitations (p. 283), says: "It would seem, therefore, to be the prevailing opinion, and one based upon sound reason, that the state cannot barter away, or in any manner abridge or weaken, any of those essential powers which are inherent in all governments, and the existence of which in full vigor is important to the well-being of organized society; and that any contracts to that end, being without validity, cannot be enforced because of any supposed conflict with the provision of the national constitution now under consideration (with reference to laws impairing the obligation of contracts). If the tax cases are to be regarded as an exception to this statement, the exception is, perhaps, to be considered a nominal rather than a real one, since taxation is for the purpose of providing the state a revenue, and the state laws which have been enforced as contracts in these cases have been supposed to be based upon consideration, by which the state receives the benefit which would have accrued from an exercise of the relinquished power in the ordinary mode." See also Cooley's Const. Lim. 125; Cooley on Taxation 52.

It is believed that it is beyond the power of the legislature to alienate the police power of the state, even by express grant, and even though the grant is founded upon a consideration. See *Thorpe* v. *R. & B. Railroad Company*, 27 Vt. 149, per REDFIELD, C. J.; Cooley's Const. Lim. 283, and cases there cited. And also that by the better opinion, the legislature cannot by contract or grant preclude itself from the future exercise of the right of eminent domain. See Cooley's Const. Lim. 281, 282, and authorities there cited. If any comparisons were to be instituted as respects their relative importance to the existence and well being of the government of a state, between the police power or the right of eminent domain on the one hand, and the right of taxation on the other, it would certainly not be unfavorable to the latter, without the exercise of which neither of the former powers could be exercised. And upon principle, it is believed that no distinction whatever can be made between an alienation of the one, and an alienation of the other, and that both, unless in terms authorized by the constitution, ought to be held equally opposed to public policy and void.

As respects the argument above quoted from Cooley's Const. Lim., that in the tax cases, the contracts are supposed to be based upon consideration, &c., it is believed that this affords no satisfactory grounds for the exception. In nearly, if not quite, all the cases of exemption by legislative contract founded on an alleged consideration (the cases of exemptions of the property of school, charitable and religious corporations may be supported on other grounds,

viz., of public policy), such consideration will, so far as it is available for purposes of *revenue*, the great object of taxation, be found to be illusory, and at best merely nominal, and as the legislature must be the judges of the adequacy of the consideration offered, grounds of public policy would seem sufficient to warrant the total denial of their right to exercise so dangerous a power, unless authorized, and then only to the extent authorized by the constitution under which they are elected. See, however, *Scotland Co.* v. *M., I. & N. Railroad Co.*, 65 Mo. 123, where it was held that the taxing power may be alienated by contract, where there is no constitutional provision inhibiting it; also cases cited, *ante*.

Conceding then, that it is settled by authority that a state may by contract founded on a consideration, preclude itself from the exercise of the right of taxation upon property of an individual or corporation, we come to the consideration of some of the rules by which grants of exemption are to be construed.

Taxation being the rule, and exemption from taxation the exception, the rule is well settled that statutes creating exemptions from taxation should be strictly construed, and not be extended beyond their terms. The intention to exempt must, in order to be effectual, be expressed in clear and unambiguous terms. Every presumption is against the exemption: Burroughs on Taxation 113, 132; Cooley on Taxation 54, 146; Cooley on Const. Lim. 281, note; 514, note; Blackwell on Tax Titles 409. These principles are illustrated by a large number of cases too numerous to be here cited, but which will be found collected by the authors above referred to. As an example, the rule may be stated that, although the power to levy a special assessment can only be justified as an exercise of the taxing power: Cooley on Taxation 147, 148; *People* v. *Mayor, &c., of Brooklyn*, 4 N. Y. 419; *State* v. *Mayor, &c., of Newark*, 35 N. J. Law 168; *Motz* v. *Detroit*, 18 Mich. 495; *Weeks* v. *Milwaukee*, 10 Wis. 242; *Glascow* v. *Rouse*, 43 Mo. 489; *Chambers* v. *Satterlee*, 40 Cal. 497; *Emery* v. *Gas Co.*, 28 Id. 346; *Reeves* v. *Treasurer of Wood Co.*, 8 Ohio St. 333; *Pray* v. *Northern Liberties*, 31 Penn. St. 69; *Baltimore* v. *Cemetery Co.*, 7 Md. 517; *McComb* v. *Bell*, 2 Minn. 295; it is well settled that an exemption of property from taxation in general terms, will not be held to exempt it from special assessments for local improvements. See matter of *Mayor, &c., of N. Y.* 11 Johns. 77; *Buffalo City Cemetery* v. *Buffalo*, 46 N. Y. 506; *City of Patterson* v. *Society*, 24 N. J. Law 385; *Northern Liberties* v. *St. John's Church*, 13 Penn. St. 104; *Broadway Baptist Church* v. *McAtie*, 8 Bush 508; *Second Universalist Society* v. *Providence*, 6 R. I. 231; *Baltimore* v. *Cemetery Co.*, 7 Md. 577; *Le Fevre* v. *Detroit*, 2 Mich. 586; *First Presbyterian Church* v. *Fort Wayne*, 36 Ind. 338; *Canal Trustees* v. *Chicago*, 12 Ill. 403; *St. Louis Public Schools* v. *St. Louis*, 26 Mo. 468; *La Fayette* v. *Orphan Asylum*, 4 La. Ann. 1; *Boston Seamen's Friend Society* v. *Boston*, 116 Mass. 181; *Sheehan* v. *Good Samaritan Hospital*, 50 Mo. 155. In *Baltimore* v. *Cemetery Co.*, *supra*, the terms of the exemption were from "any tax or public imposition whatever," but this was held not to exempt the cemetery from an assessment for paving the street in front of the premises. *Buffalo City Cemetery* v. *Buffalo*, *supra*, is even stronger. In that case the exemption was in terms from "all public taxes, rates and assessments," and yet this was held not to apply to a municipal assessment to defray the expenses of a local improvement, the adjective "public" being considered as applying to the nouns "rates," and "assessments," as well as to the noun "taxes." See also *Patter-*

son v. *Society*, *supra*; *State* v. *Newark*, 27 N. J. Law 185; *Bridgeport* v. *N. Y. & N. H. Railroad Co.*, 36 Conn. 255, where the exemptions were also very general in their terms. See, however, *Harvard College* v. *Boston*, 104 Mass. 470, where a special assessment for altering a street, was considered a civil imposition within the meaning of an exemption of college property from "all civil impositions, taxes and rates."

Applying the rule that statutes creating exemptions are to be construed strictly, to the case of educational, charitable and religious corporations employing some portion of their means in the purchase of property not required nor directly used for the purposes for which their corporate privileges were conferred, though capable of being made useful and profitable as an aid in their corporate purposes, the general inclination of the courts seems to be to hold, as was held by the Supreme Court of Illinois in the principal case (though, as it seems, upon an inaccurate view of the language of the state constitution), that an exemption of property used or occupied for such purposes would not exempt from taxation property held by the corporations for mere purposes of profit, but not used directly for the purposes for which they were incorporated. See the cases cited by the Supreme Court of Illinois, when the principal case was before them, in 80 Ill. 336; Cooley on Taxation 150, 151; *Proprietors* v. *Lowell*, 1 Met. 538; where an exemption of "all houses of religious worship, and the pews and furniture within the same," was held to exempt only that part of a building occupied for religious worship, and not other portions leased for business purposes: *Orr* v. *Baker*, 4 Ind. 86; *Washburn College* v. *Commissioners*, 8 Kan. 344; *First M. E. Church*, v. *Chicago*, 26 Ill. 482; *Wyman* v. *St. Louis*, 17 Mo. 335; *Pierce* v. *Cambridge*, 2 Cush. 611; *Kendrick* v. *Farquar*, 8 Ohio 189; *Cincinnati College* v. *The State*, 19 Id. 110; *Vail* v. *Beach*, 10 Kan. 214; *Morrison* v. *Larkin*, 26 La. Ann. 699; *Methodist Church* v. *Ellis*, 38 Ind. 3; *Detroit Young Men's Society* v. *The Mayor of Detroit*, 3 Mich. 172; *State* v. *Ross*, 24 N. J. Law 497; where under a statute exempting the property of "all colleges, academies and seminaries of learning," the houses and lots provided for the residence of the president, professors and stewards, as part of their compensation for their services, were held exempt; but a building owned by the college, and occupied as a grammar school, by a person paying an annual rent therefor, was held not to be exempt, although it aided the college incidentally in preparing students for the college.

Indeed, an exemption by statute in general terms, of all the property of a college or other literary institution, seems generally to extend only to property actually used by the institution for its legitimate purposes. The same rule seems to have been applied whether the exemption is in express terms, of such property only as is used for literary purposes, or whether the terms used are general; and it seems, that the use in order to come within the terms of the exemption, must in either case be directly in aid of the purposes for which the corporations were created. Burroughs on Taxation 134; *State* v. *Ross*, 24 N. J. Law 497; *State* v. *Elizabeth*, Id. 103; *Proprietors* v. *Lowell*, 1 Met. 538; *Orr* v. *Baker*, 4 Ind. 86. See also, the cases cited next above.

No question was made in the principal case, either in the Supreme Court of Illinois, or in the Supreme Court of the United States, but that the words of the Amendatory Act of 1855, are sufficiently broad to exempt the property in question, but the question was, whether the constitution of 1848 authorized the passage of such an exemption law. In the principal case the principle that exemptions are exceptional, and therefore

to be construed strictly, was by the Supreme Court of Illinois applied to section 3 of article 9, of the state constitution of 1848, quoted in the opinion. The Supreme Court of Illinois appear also, in the printed report of the case, 80 Ill. 334, 335, to have put their construction upon a misquotation of the section in question, which is quoted thus: "The property of the state and counties, both real and personal, and such other property as the General Assembly may deem necessary for *schools*, religious and charitable purposes, may be exempted from taxation." Again, on page 335 they say: "It [the General Assembly] is clearly restricted, in the exercise of this discretion, to property for *schools*, and for religious and charitable purposes." It is but just to state, however, that this error does not appear to have influenced their decision, for on page 336 they say: "Houses, furniture, grounds, &c., to be actually used for educational purposes, may be said to be for school purposes, &c."

No authority was cited by the Supreme Court of Illinois, for the proposition, assumed by the court, that the rule of strict construction applicable to statutes in fact creating exemptions, is applicable to a constitutional provision, not creating an exemption, but authorizing the exercise of a *discretion* by the legislature (within certain specified limits), as to exemptions to be created by the legislature; and no reason is perceived why, in construing the constitutional provision in question, the ordinary rules of construction should not be applicable, and the meaning of the provision in question be determined by the fair and natural import of the terms, and in view of the subject-matter of the provision. From this view of the case, the distinction taken between the terms "for the use of schools" and "for school purposes" will doubtless commend itself to the minds of most persons. Still it is not so obvious, but that differences of opinion might well exist upon the question, especially in view of the authorities already cited. But there is another view of the case from which the decision of the Supreme Court of the United States seems, to the writer at least, more satisfactory, and that is, not as stated by the Supreme Court of Illinois, that, while a discretion is conferred on the General Assembly whether to exempt or not, and if it shall determine to exempt, the amount of the exemption, it is restricted in the exercise of this discretion to property for *schools*, and for religious and charitable purposes, using those terms in the narrow sense above stated; but that the intention of the provision clearly was to confer upon the legislature a broader discretion, not only as to whether to exempt or not, and, if they should determine to exempt, the amount of the exemption, but also if they should determine upon making some exemption, a discretion to determine for themselves whether any proposed exemption is necessary (using that term not in its strict, narrow sense, but more nearly in the sense in which it is used in the law with reference to the power of infants to contract for necessaries), proper or appropriate for school purposes, or the ends to be accomplished by schools, which involves the determination not only of the degree of fitness for the purpose, but also to some extent whether or not the purpose is a school purpose; and, if in the exercise of their discretion they determine that the exemption in question is necessary or appropriate and proper for the advancement of the object aimed at, the aid of the schools, their decision, unless clearly evasive and colorable, is conclusive, and cannot be reviewed by the courts. See *Northwestern University* v. *The People*, 86 Ill. 141, 142, dissenting opinion of SHELDON and DICKEY, JJ.

Whether or not it was wise to give the legislature so broad a discretion, is not in issue, but the question is, Did the constitution of 1848 confer such a

discretion? and it seems that it did. Upon the whole then, the decision of the principal case appears to be correct, though, as it seems to the writer, it would have been more satisfactory, had it also been based on the apparent intention to grant a broader discretion to be exercised by the legislature, and one not reviewable by the courts.

MARSHALL D. EWELL.

Supreme Court of Indiana.

THE PENNSYLVANIA RAILROAD COMPANY *v.* SINCLAIR, ADM.

In an action by the administrator of a decedent, against a railroad company, to recover for the alleged negligent killing of said decedent, by the servants of the defendant, while running a locomotive and train of cars across a public street in a populous part of the city, the complaint alleged, that, when the decedent was run over and killed, the defendant was running such locomotive and train "at a recklessly and grossly negligent and dangerous rate of speed, to wit, at the rate of forty miles per hour," in violation of an ordinance of such city, limiting the rate of speed to six miles per hour. *Held*, it being admitted that the decedent was guilty of contributory negligence in stepping upon the track in front of the engine, that evidence that the defendant had wilfully committed the injury is not admissible under the complaint.

Where an intent, either actual or constructive, to commit an injury exists at the time of its commission, such injury ceases to be a merely negligent act, and becomes one of violence or aggression.

Contributory negligence is a complete defence to an action for damages for a merely negligent injury. It is only when the injury sued for is alleged, in terms or substance, to have been wilfully committed, that contributory negligence ceases to be a defence.

THIS was an action by Thomas Sinclair, administrator of John Sinclair, against the Pennsylvania Company, for damages for killing the said John Sinclair.

The complaint was in two paragraphs.

The first stated, in substance, that, on October 29th 1873, the defendant was running a train of cars over the track of the Pittsburgh, Fort Wayne and Chicago Railway Company, where said track crosses Fairfield avenue, a public street in the city of Fort Wayne; that said street was in a populous part of said city, and was used by persons on foot and otherwise; that, on that day, while the said John Sinclair was passing along and upon said street and over said track, with due caution on his part, the defendant, by its servants and agents, so carelessly ran and operated said locomotive and train of cars, that the same were run upon and over the said John Sinclair, thereby causing his death.

The second paragraph set out again the same facts substantially, but averred that the defendant was running said locomotive and